

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6634 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SUMESARA G ABIBHAI

Versus

DISTRICT PANCHAYAT SERVICE SELECTION COMMITTEE

MR JAYANT PATEL for Petitioner

SERVED for Respondent No. 1, 5

MR HS MUNSHAW for Respondent No. 3

MR.A.J. DESAI, ASST. GOVERNMENT PLEADER for Respondent
No. 4

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE S.D.DAVE

Date of decision: 13/09/96

ORAL JUDGEMENT

The petitioners, by filing this petition, amongst

other prayers, have prayed for issuance of a writ of mandamus directing the respondent authorities to forthwith appoint the petitioners and other similarly situated candidates as per Annexure 'A' to the petition, as Talati-cum-Mantri, or in the alternative, to direct the respondent authorities to operate the wait list of 1983 for the said post.

2. Succinctly stated, the facts, as it emerges from the records, are as under :-

Respondent No.1 published an advertisement in newspapers inviting applications so as to reach on or before 30.11.1982, for preparing a waiting list for appointment to the post of Talati-cum-Mantri. The said advertisement, at Annexure 'A' to the affidavit in reply, so far as Ahmedabad Jilla Panchayat is concerned, was for 17 unreserved posts, 2 posts for Scheduled Castes, 3 posts for Scheduled Tribes, 1 post for physically handicapped and 2 posts for persons belonging to Baxi Panch communities. Annexure 'B' to the affidavit in reply, i.e. instructions given to the applicants, indicates that the wait list so prepared after oral interview would be valid for a period of One year and the wait list, prepared by a Committee, of the successful candidates on passing the competitive examination shall remain operative till the result of the next examination is declared. It was also made clear that no candidate will get a right of appointment merely because his/her name is listed in the wait list.

3. The petitioners before us are contending that they were selected and are placed in the wait list. They further contend that there is gross delay on the part of the respondent authorities in taking action in time to give appointment to the petitioners. It is further contended that the petitioners and other similarly situated persons were hopeful of getting appointment, and, therefore, they have not made any sincere efforts to find out another job. It may be noted that as per the advertisement, appointments are already made. Even thereafter, as contended by the respondents, appointments are made according to merits from amongst the candidates wait listed. In all 111 persons have been appointed.

4. It is further contended by the petitioners that 100 persons whose names have been found in the select list were given temporary appointment as Clerks in the year 1987 by the Taluka Development Officer, Dhandhuka, in the drought affected areas where relief works were in operation. No further appointments have been made from

the select list. In the amended paragraph 4 (vi) of the petition, it is stated that six candidates who were selected along with the petitioners and whose names were subsequent to the names of the petitioners in the wait list have been appointed. Learned advocate for the petitioners, in view of the affidavit in reply, has fairly not pressed the contention raised in paragraph 4 (vii) and hence we need not discuss the same. Therefore, in short, the case of the petitioners is that as their names are listed in the wait list and as no examination has been held thereafter, the wait list must be held operative and appointments must be made from that wait list, and, in any event, as persons who were listed below the petitioners in the wait list have been appointed, the petitioners must also get appointments.

5. Mr. Munshaw, learned advocate for the respondents has pointed out that out of the six candidates referred to in paragraph 4 (vi) of the petition, candidate appearing at Sl. No. 140 is a candidate who belongs to Baxi Panch; candidate appearing at Sl. No. 146 belongs to reserved category of physically handicapped; and, two candidates shown at Sl. No. 209 and 251 belong to Scheduled Tribes. He submitted that these persons were appointed because they belong to "reserved category". Mr. Munshaw further submitted that candidates shown at Sl. No. 154 and 187 are not appointed. Thus, according to respondents, persons are appointed in accordance with policy and merits and no injustice is done to anyone.

6. The advertisement, at annexure 'A' to the affidavit in reply, at page 45 of the compilation, clearly indicates that the advertisement issued was for preparing a waiting list for the said post, and that too for 25 posts only. It is pertinent to note that the advertisement is issued in the year 1982 and the last date for receipt of the application was 30.11.1982.

7. As 25 posts were to be filled in as indicated in the advertisement, it was decided to prepare a waiting list. However, while preparing the waiting list, the Committee has prepared a list containing names of 251 candidates, which is ten times more than the posts to be filled in. Thus, a reasonable ratio has not been maintained in the instant case. Too long a wait list of successful candidates would naturally last for a very long period and that would keep away other candidates who would be otherwise entitled to get appointment at the time of appointing candidates from such a long list. By preparing such a list, the doors for such new candidates

are closed. Therefore, it is essential that the select list or wait list which is prepared must be co-related with the vacancies to be filled in or anticipated vacancies or likely to arise in the near future, or operation of the select list should be restricted for a fixed period.

8. The purpose of direct recruitment is to infuse new and fresh blood in the administration so that young, talented, freshly equipped candidates possessing necessary dynamism is made available to the administration. By mere inclusion of name in the wait list, a candidate can stake his claim for consideration for such vacancies which were then available or which would have been available in the near future or in the reasonable vicinity from the date of preparation of the list. They cannot contend that on failure to prepare the next wait list, the earlier wait list should be operated for all times to come so as to confer right on them of being considered for vacancy that might arise, keeping aside the fact that the list prepared was for limited vacancies and was not to be operated for a very long period during which others were also entitled to compete for the same.

9. Preparation of a wait list of candidates equal to or at the most two times in number of the vacancies may be considered as just and reasonable so that in case of non availability or non-resumption of any candidate, candidates duly listed in the select be made available. That is considered as just and proper from the point of view of administration. It appears that considering various aspects including this, the State, in exercise of the powers conferred by Section 232 read with sub-section (3) of section 203 of the Gujarat Panchayat Act, 1961 has framed rules known as The Gujarat Panchayat Secretary (Panchayat Service) Recruitment (Competitive Examination) Rules, 1987 (hereinafter referred to as the Rules). Rule 19 of the said Rules provide that the number of candidates which shall be included in the selection list prepared by the Selection Committee shall be one half times the number of vacancies notified by the Secretary of the Selection Committee. Rule 20 provides that the list shall remain in force till the result of the next examination is published.

10. Mr. Patel, learned advocate submitted that no reliance can be placed on the aforesaid Rules of 1987 and at the most, the State can place reliance on the circulars which were issued at the relevant time.

11. On behalf of the respondents, along with the affidavit, several circulars are placed on record. Mr. Patel, learned Advocate for petitioners, submitted that in the absence of statutory Rules, ordinarily circulars are binding to the authorities. A circular dated 4th April 1979, at page 51, refers to instructions given in earlier circular dated 20th April 1972 over and above the instructions to be followed after issuance of the circular dated 4.4.1979. As per the earlier circular, in case a waiting list prepared by the Commission for the post, for which prior to appointment training is not necessary, the Government may request the Commission for appointment of persons from the said list in addition to the appointments already made from the said list but as per circular, such request was to be made within a period of one year from the date of recommendation for preparing the list. Thus, such a list was operative for a limited period of one year from the date of making a proposal; however, by circular dated 4.4.79, the period came to be extended. It was decided to extend operative period of the wait list to two years only in cases where the wait list was to be prepared without holding competitive examinations. It was also decided that the wait list prepared after the examinations shall be operative till the next examination is held and its result is declared. Thus, by this resolution, a wait list prepared in the first instance after following the procedure for selecting candidates for calling at the examination was to be operative for a period of two years only. Intention of preparing such a wait list is to call for the candidates for examination if during the period of two years, further vacancy arises.

12. A wait list of candidates, successful at the competitive examination must not be lengthy, but must be co-terminous with the vacancy to be filled in. In case of further vacancy, from the wait list prepared as aforesaid, candidates can be called at the examination. Thus, it was made clear that a wait list prepared after competitive examination and wait list of candidates prepared after following procedure, except examinations are different.

13. In the instant case, as per Annexure 'B' to the affidavit in reply, wait list of candidates prepared after oral interview was valid for one year from the date of its publication. The Committee was expected to call the candidates for competitive examinations from the said wait list, keeping in mind the number of posts to be filled in. The number of examinees and successful candidates to be empanelled in a wait list must be in

such a proportion so as to see that the wait list prepared is co-terminous with the posts which are to be filled in. In the instant case, instead of wait lists, as indicated above, the selection committee, without bearing in mind the guidelines, prepared the wait list. After holding examinations, the Committee prepared at a time one wait list of candidates which is ten times more than the vacancy, which is not contemplated. As the Selection Committees were preparing lists in this fashion, by a circular dated 12.6.1989, at Annexure 'F' to the affidavit in reply, it was indicated that a select list be prepared after results of the examinations according to merits and the said select list must contain number of selectees only to the extent of number of vacancy and in no case, the number should exceed the post to be filled in. It was also indicated that a wait list be prepared by 10% of the post to be filled in so that in case the selected candidate is not willing to join, the candidate in the wait list can be selected. Thus, for the first time, by this circular, instructions were given to prepare a select list and a wait list after the results of competitive examinations.

14. According to the circular dated 29.5.1982, Annexure 'C' to the affidavit in reply, the wait list once prepared shall be operative till the result of the next examination is declared. In the circular, there is no reference to the number of candidates to be enlisted qua the post to be filled in. It was only pertaining to the life of the wait list. It goes without saying that this would apply in a case if the wait list which is prepared is co-terminous with the post which are to be filled in. Practice of equal opportunity in the matter of employment would be denied by preparing an unduly long list and this practice has been deprecated by the Apex Court as well as by this Court in several decisions. The Apex Court, in the case of STATE OF BIHAR VS. SECRETARIAT ASST. SUCCESSFUL EXAMINEES' UNION 1985 reported in AIR 1994 SC 736, has considered and decided the question arising from expectation of persons whose names were included in unduly lengthy select list and who were ultimately denied appointment. The Supreme Court held as under :-

"We are, therefore, of the opinion that the directions given by the High Court for appointment of the empanelled candidates according to their position in the merit list against the vacancies till 1991 was not proper and cannot be sustained. Since no examination has been held since 1987, persons who have become

eligible to compete for appointments were denied the opportunity to take the examination and the direction of the High Court would prejudicially affect them for no fault of theirs. At the same time, due to the callousness of the State in holding the examination in 1987 for the vacancies advertised in 1985 and declaring the result almost three years later in 1990 has caused great hardship to the successful candidates. The State was expected not to act in such a leisurely manner and treat the matter of selection or appointment to services in such a casual manner. We must record our unhappiness on this state of affairs. There is no justification for holding the examination two years after the publication of advertisement and declare the result almost three years after the holding of the examination and not issuing any fresh advertisement between 1985 and 1991 or holding examination for making selections. We expect the State Government to act in a better manner, atleast, hereinafter and since Mr. Rao, the learned Senior Counsel has shared our concerned and assured us of advising the State Government accordingly, we say no more on that aspect at this stage.

Thus, the view of the Apex Court is clear that such a list cannot be made operative.

15. Mr. Patel, learned advocate submitted in the above case, the Apex Court has given directions. He invited our attention to paragraph 12 of the judgment and submitted that as the Apex Court has given directions by directing the State Government with regard to the age bar, similar directions should be given in the instant case. In that case, following directions were given:-

- (1) That the appellant State of Bihar shall issue an advertisement inviting applications for the posts of Assistants within 4 weeks from the date of this judgment.
- (2) That the advertisement shall indicate the total number of vacancies actually existing and likely to arise in the cadre till 31.12.1993 which are required to be filled up. Thus, apart from the existing vacancies of 1989-92 the probable vacancies till 31.12.93, shall also be included while indicating the number of vacancies to be filled up.
- (3) That the age bar shall be relaxed in favour of candidates of the 1987 examination who had

secured 40% or above marks in that examination, to enable them to appear in the fresh examination, if they so choose.

- (4) That the selection process including the holding of the examination and publication of the select list shall be completed within a period of 9 months from the date of the publication of the advertisement/notification inviting applications.
- (5) That after the publication of the select list, the appointments shall be made within 4 weeks from the date of the publication of the select list.
- (6) That the rules relating to reservation etc. shall apply to the selections to be made.

Learned Advocate Mr. Patel submitted that in any case, similar directions be given to the respondents and the petitioners be permitted to appear at the examination and may be permitted to compete with others.

16. We have given anxious thoughts. The State has framed Rules in 1987 and it would not be proper to issue directions contrary to the Rules for the list prepared in 1983. In the instant case, considering the time of examination and the decision of this matter, there is a gap of almost 12 years. Though the wait list was for 25 vacancies, in all respondents have filled in 111 vacancies till date. In the case of STATE OF BIHAR VS. SECRETARIAT ASST. SUCCESSFUL EXAMINEES' UNION 1985 (Supra) advertisement was published in 1985 and number of vacancies to be filled in was not notified. Examinations at different centres were held in November 1987 and the result was published in 1990. As per communication, total number of existing vacancy as on 25.8.1987 was 357. On 31.7.90, on the recommendation of the Board, 309 candidates were appointed and others who were empanelled were made to wait in anticipation of release of further vacancies which were not disclosed by authorities to the Board despite enquiries. Despite the vacancies at the relevant time, appointments were not made. Their representation was not considered and fresh advertisement was issued. In the instant case, it was disclosed in the advertisement that 25 posts are to be filled in and the candidates are appointed. Therefore, in our view, it would not be just and proper to permit them to appear at the examination by giving similar directions.

17. In the case of STATE OF BIHAR vs. MADAN MOHANSINGH reported in AIR 1994 SC 765, the apex Court considered the question about select list and held that once on the existing vacancies persons are appointed, the

list gets exhausted and should not be operated for filling up future vacancies or subsequent vacancies. In the reported case, applications were invited to fill up 32 vacancies only. 129 candidates were called for interview, namely, four times the number of vacancies. A decision was taken that if any further vacancy was to be filled up within a period of one year, the same may be filled up by recommending the candidates in order of merit from amongst the merit list. In paragraph 7 of the judgment, the Apex Court held that :-

... The temporary vacancies arose subsequently but even otherwise in the view we are taking namely that the particular advertisement and the consequent selection process were meant only to fill up 32 vacancies and not to fill up the other vacancies, the merit list prepared on the basis of the written test as well as the viva voce will hold good only for the purpose of filling up those 32 vacancies and no further because the said process of selection for those 32 vacancies got exhausted and came to an end. If the same list has to be kept subsisting for the purpose of filling up other vacancies also that would naturally amount to deprivation of rights of other candidates who would have become eligible subsequent to the said advertisement and selection process."

18. In the instant case, the list is ten times more than the candidates who were to be appointed. The list is lengthy and disproportionate to the number of vacancies to be filled in. The select list duly prepared must be co-terminous with the number of vacancies to be filled in or at the most, the list can be used for vacancies to be filled in which may be available in the near future or in the reasonable vicinity from the date of preparation of the list, but it cannot be used for making appointment after a very long period. Thus, it is very clear that when the list was prepared, there were no Rules, and, therefore, it goes without saying that the wait list which was prepared should have been prepared in such a way that it may not affect the right of other candidates who are otherwise entitled to be selected subsequent to preparation of the select list.

19. As held by the Apex Court, a select list duly prepared must be co-terminous with the number of vacancies which are to be filled in and such a list must get exhausted and come to an end. In our view, in the absence of statutory Rules, once such vacancies are

filled in, the select list should get exhausted and the list cannot be and should not be held operative for vacancies that may arise in future, otherwise it would obstruct the right of other candidates. The wait list prepared is not according to policy or guidelines issued earlier. We are, therefore, of the view that the wait list in question being not co-terminous with the number of vacancies to be filled in, very lengthy and disproportionate, and prepared before twelve years, cannot be now pressed into service by the petitioners for seeking employment under an old and outdated list. The respondents must prepare the list for the post to be filled in, in accordance with the rules published forthwith and no appointments shall be made from the aforesaid list.

20. In view of the aforesaid two decisions of the Apex Court, we hold that the preparation of a lengthy wait list insofar as it exceeds the notified vacancy, is arbitrary and cannot be pressed into service by the petitioners, and, therefore, this application is rejected, with no order as to costs.

Rule discharged.

csm./